

OPINION  
73-261

February 7, 1973 (OPINION)

Representative Vernon E. Wagner  
Forty-third Legislative Assembly  
House Chamber  
State Capitol  
Bismarck, North Dakota

Dear Mr. Wagner:

This is in response to your request for an opinion concerning section 26-08-11 of the North Dakota Century Code, as amended. We understand that your request is pursuant to inquiry submitted to you by Blue Shield of North Dakota, by letter of date, January 24, 1973. The text of the inquiry is as follows:

"As you may know, section 26-27-11 of the North Dakota Century Code having to do with Blue Shield provides as follows:

'The funds of any corporation subject to the provision of this chapter shall be invested only in such securities as provided by law for the investment of funds of domestic insurance companies of this state.'

"If we turn to 26-08-11, we find that it has to do with the limitations of domestic insurance companies in making investments. Subsection (6) of that particular statute reads as follows:

. Mortgage bonds and debentures of any solvent industrial public utility or financial corporation duly incorporated and organized under the laws of the United States of America or of any state, territory, or insular possession thereof, or of the Dominion of Canada or of any province thereof . . .'

"The first two lines of this subsection (6) are quite ambiguous and I believe that their ambiguity arises out of the fact that the printer neglected to put a comma between 'industrial' and 'public.' We have been investing in industrial bonds and debentures for many years and substantially all of the domestic insurance companies in North Dakota have done likewise.

"In your capacity as a legislator, would you be kind enough to take this matter up with the Attorney General and clarify line 1 of subsection 6 by having him rule that there should be inserted between 'industrial' and 'public', a comma?"

We understand that the foregoing inquiry is being submitted to this office for opinion under the provisions of section 54-12-01 of the North Dakota Century Code, providing in part:

"ATTORNEY GENERAL DUTIES. The attorney general shall:

\* \* \*

8. Give written opinions, when requested by either branch of the legislative assembly, upon legal questions; \* \* \* ."

We would initially note that prior to the current provisions of section 26-08-11 (6) of the North Dakota Century Code, the same appeared as section 26-0811 of the North Dakota Revised Code of 1943, as a result of the enactment of Senate Bill No. 97 by the 1943 Legislative Assembly, chapter 156 (section 2) of the 1943 Session Laws. The same provided as follows:

6. Mortgage bonds and debentures of any solvent industrial or public utility corporation duly incorporated and authorized under the laws of the United States of America or of any state therein." (emphasis supplied)

It is to be noted that at that time the word "or" existed between the words, "industrial" and "public," which would seemingly give the same grammatical effect of a comma in such placement. At that time, however, the statute only referred to the two types of corporations; i.e., "industrial" and "public utility." At present, the statute also refers to "financial corporation"; however, the word "or" formerly placed between the words "industrial" and "public" has been deleted.

The deletion referred to above and the addition of the third entity in which investments were authorized came about by the amendment to said section by House Bill No. 179, appearing as chapter 217 of the 1947 Session Laws. Examination of the original bill, as introduced, the bill as drafted and printed, and the enrolled bill which was signed into law by the governor, indicates that the word "or" was specifically deleted, there being no indication to insert therein a comma. The result of such action, of course, appears to be the problem with which your letter is concerned, resulting in confusion and ambiguity to the extent that literal interpretation leaves that particular reference in the statute as meaningless. The question of legislative intent appears to be the key issue in this regard since there seems to be no incongruity insofar as the drafting or enactment of the particular Act is concerned and its appearance in the resulting statutes of this state.

Noting that the code revisor's notes do not make specific mention of the subject amendment nor to subsection 6 of the existing statute, we are left only with the context of same and its apparent meaning and intent inferred therefrom. In reviewing the history of this particular provision, we first note that domestic insurance companies were authorized to make investments in mortgage bonds and debentures of any solvent industrial or public utility corporation duly incorporated, etc. The amendment added financial corporations and also deleted the word "or." Accordingly, it appears clear that the legislature intended to expand and extend the authority to make such investments by its inclusion of financial corporations. Whether the legislature intended to restrict investments which originally existed; i.e., industrial or public utility corporations, to limit such investments to those corporations which would qualify as "industrial public utility corporation" would generally appear to be

ascertainable from the text and grammar used in the statute. In this instance, however, and in view of the fact that a limitation to "industrial public utility corporations," is in practical application a restriction or limitation to a virtually nonexistent entity, we must determine whether the legislature intended to be so restrict or limit investments or whether the intention was to authorize investments in both industrial corporations and public utility corporations.

Applying the rule of interpretation that the legislature does not do an idle act, we would first note that the word "or" was deleted. This would appear to be a proper resulting deletion after the third type of entity was added. If the legislature had intended to preclude investments in either industrial corporations or public utility corporations which had both been authorized investments prior to the amendment, it could have obviously deleted such entities at the time the word "or" was deleted. It would further appear that a limitation which in all practical circumstances is tantamount to a deletion, without further meaning or explanation, would constitute an idle act of the legislature. We do not believe such is the case. It appears rather that the legislature intended to authorize investments in industrial corporations and public utility corporations and, in accordance with the amendment, financial corporations, all as further specified by the statute.

Accordingly, it is the opinion of this office that section 26-08-11 (6) of the North Dakota Century Code, authorizes investments in mortgage bonds and debentures of any solvent industrial corporation, public utility corporation or financial corporation duly incorporated and organized under the laws of the United States of America or of any state, territory, or insular possession thereof, or of the Dominion of Canada or of any province thereof. We do not believe that the printer inadvertently omitted the comma between the words "industrial" and "public" in said subsection, but that the legislative intent was to authorize investments in both industrial corporations and public utility corporations, in addition to the third entity added by the amendment, financial corporations.

We trust that the foregoing will adequately set forth the opinion of this office upon the matters submitted.

Sincerely yours,

Allen I. Olson

Attorney General